
By: **Chairman, Environmental Matters Committee (By Request -
Departmental - Environment)**

Introduced and read first time: February 2, 2004

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Environment - Hazardous Material Security**

3 FOR the purpose of requiring the Department of the Environment to establish certain
4 fees for certain hazardous material and related facilities; providing for the
5 payment of certain fees to a separate account in the Community Right-to-Know
6 Fund; specifying certain uses of certain funds deposited to the Fund; requiring
7 owners, lessees, and operators of certain facilities involving certain hazardous
8 materials to report certain measures and pay a fee to the Department; requiring
9 the Department to approve a certain code or set of standards; requiring the
10 Department to conduct certain audits of certain facilities; requiring the
11 Department to report certain violations to the Department of State Police for
12 enforcement; providing for the confidentiality of certain documents; establishing
13 certain penalties for violations of this Act; defining certain terms; providing that
14 this Act does not affect the availability of other penalties and remedies;
15 requiring the Department to adopt certain regulations by a certain date;
16 authorizing the Department of State Police to adopt certain regulations by a
17 certain date; providing that this Act does not apply in local jurisdictions that
18 adopt standards that are at least as stringent as certain standards required by
19 this Act; making the provisions of this Act severable; and generally relating to
20 the reporting and regulation of certain hazardous materials and related
21 facilities.

22 BY repealing and reenacting, with amendments,
23 Article - Environment
24 Section 7-604
25 Annotated Code of Maryland
26 (1996 Replacement Volume and 2003 Supplement)

27 BY adding to
28 Article - Environment
29 Section 7-701 through 7-710, inclusive, to be under the new subtitle "Subtitle 7.
30 Hazardous Material Security"
31 Annotated Code of Maryland

1 (1996 Replacement Volume and 2003 Supplement)

2 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
3 MARYLAND, That the Laws of Maryland read as follows:

4 **Article - Environment**

5 7-604.

6 (a) Notwithstanding § 7-219 of this title, there is a Community
7 Right-to-Know Fund.

8 (b) The Department shall use the Community Right-to-Know Fund for:

9 (1) The collection, management, and analysis of data received by the
10 Department from an owner or operator of a facility that is required by the federal Act
11 or any regulations adopted under the federal Act to provide information to the State
12 under § 7-602(b) of this subtitle;

13 (2) Enforcement by the State of this subtitle or the federal Act; and

14 (3) Planning and training functions performed by the State or local
15 instrumentalities as may be required by the federal Act including:

16 (i) Conducting:

17 1. Incident response activities;

18 2. Shelter in place and evacuation planning;

19 3. Railroad, maritime, and transportation exercises; and

20 4. Emergency response activities;

21 (ii) The collection of hazardous material commodity flow
22 information;

23 (iii) The acquisition and maintenance of chemical reference
24 materials;

25 (iv) Public outreach activities including case studies, school safety,
26 and emergency planning for citizens; and

27 (v) Participation by emergency response personnel in related
28 training conferences on local, State, and federal regulatory and compliance updates,
29 incident command, and crisis control.

30 (c) The Department shall:

31 (1) Establish an annual fee for facilities required to report to the State or
32 its instrumentalities under the federal Act; and

1 (2) Base the annual fee on the cost to the Department for processing the
2 information submitted to the Department under § 7-602(b) of this subtitle.

3 (d) Except as provided in subsection (f) of this section, beginning March 1,
4 2003 and each year thereafter:

5 (1) The annual fee shall be paid to the Department no later than March
6 1 of each year for reports required under § 312 of the federal Act; and

7 (2) The annual fee shall be paid to the Department no later than July 1
8 of each year for reports required under § 313 of the federal Act.

9 (e) Subject to subsection (b) of this section, the annual fee assessed by the
10 Department under this section may not exceed \$1,000 in any calendar year for a
11 responsible person who owns or operates one or more facilities in Maryland.

12 (f) (1) The following persons and entities are exempt from paying any fees
13 under this section:

14 (i) Governmental agencies;

15 (ii) Farmers whose principal residence is located on their farm;

16 (iii) Charitable organizations as defined under § 6-101(d) of the
17 Business Regulation Article;

18 (iv) Petroleum retail facilities with less than 75,000 gallons of
19 gasoline and less than 100,000 gallons of diesel or similar fuel; and

20 (v) Entities that are exempt from reporting under the federal Act.

21 (2) The Secretary may adopt regulations that exempt additional entities
22 from the requirement to pay the fees to the Department required by this section.

23 (g) Any fee or penalty collected or imposed under this subtitle shall be paid by
24 the Department to the Fund.

25 (h) The Department shall use 50% of the moneys in the Fund to provide grants
26 to local emergency planning committees.

27 (i) (1) A local emergency planning committee that receives moneys under
28 subsection (h) of this section shall provide an annual report to the Department
29 documenting the manner in which the moneys were expended by the local emergency
30 planning committee.

31 (2) A local emergency planning committee shall spend the moneys
32 provided under subsection (h) of this section for activities identified under subsection
33 (b) of this section or for any other activity which the Department determines is
34 consistent with the purposes of this subtitle.

1 (j) Moneys allocated to a local emergency planning committee under
2 subsection (h) of this section that are not utilized by the local emergency planning
3 committee within 1 year after receipt of the allocation shall be remitted to the
4 Department and may be reallocated by the Department.

5 (k) (1) After providing reasonable notice, the Secretary may require a local
6 emergency planning committee to provide the Department with information or
7 documentation relating to the utilization of moneys allocated under subsection (h) of
8 this section.

9 (2) The Secretary may require an independent audit of any local
10 emergency planning committee not found to be in compliance with paragraph (1) of
11 this subsection.

12 (l) (1) The Secretary may recover any inappropriate expenditure made by a
13 local emergency planning committee from the Fund.

14 (2) Any expenditure made by a local emergency planning committee that
15 is inconsistent with subsection (i) of this section or the purpose of this subtitle shall
16 be:

17 (i) Reimbursed by the local emergency planning committee to the
18 Department; and

19 (ii) Remitted to the Fund within 90 days after receipt by the local
20 emergency planning committee of a notice from the Department indicating that the
21 expenditure is inappropriate.

22 (M) NOTWITHSTANDING SUBSECTIONS (B) THROUGH (L) OF THIS SECTION,
23 THERE SHALL BE A SEPARATE ACCOUNT WITHIN THE COMMUNITY RIGHT-TO-KNOW
24 FUND CONSISTING OF ALL FEES COLLECTED BY THE DEPARTMENT UNDER TITLE 7,
25 SUBTITLE 7 OF THIS ARTICLE OR FUNDS APPROPRIATED IN THE STATE BUDGET FOR
26 ALL COSTS INCURRED BY THE DEPARTMENT FOR THE PURPOSES STATED UNDER §
27 7-706 OF THIS TITLE.

28 SUBTITLE 7. HAZARDOUS MATERIAL SECURITY.

29 7-701.

30 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
31 INDICATED.

32 (B) "FACILITY" MEANS A LOCATION IN THE STATE IN WHICH A HAZARDOUS
33 MATERIAL IS STORED, DISPENSED, USED, OR HANDLED.

34 (C) "HAZARDOUS MATERIAL" MEANS A REGULATED SUBSTANCE AS DEFINED
35 IN 40 C.F.R. 68.130 IN EXCESS OF THE THRESHOLD QUANTITY SPECIFIED IN THAT
36 REGULATION.

1 7-702.

2 (A) THIS SUBTITLE APPLIES TO ANY PERSON WHO OWNS, OPERATES,
3 MAINTAINS, OR CAUSES TO OPERATE OR MAINTAIN A FACILITY IN THIS STATE.

4 (B) THIS SUBTITLE DOES NOT APPLY IN A LOCAL JURISDICTION THAT ADOPTS
5 HAZARDOUS MATERIAL SECURITY STANDARDS THAT ARE AT LEAST AS STRINGENT
6 AS THE STANDARDS UNDER § 7-703 OF THIS SUBTITLE.

7 (C) ON OR BEFORE OCTOBER 1, 2005, AND AT LEAST EVERY 5 YEARS
8 THEREAFTER, A PERSON SUBJECT TO THIS SUBTITLE SHALL:

9 (1) ANALYZE THE SECURITY OF THE FACILITY IN ACCORDANCE WITH
10 THE HAZARDOUS MATERIAL SECURITY STANDARDS ADOPTED BY THE DEPARTMENT
11 UNDER § 7-703 OF THIS SUBTITLE;

12 (2) SUBMIT TO THE DEPARTMENT THE ANALYSIS REQUIRED UNDER
13 PARAGRAPH (1) OF THIS SUBSECTION, INCLUDING POTENTIAL SECURITY THREATS,
14 VULNERABILITIES, AND CONSEQUENCES TO THE FACILITY AND ANY CHANGES
15 TAKEN TO IMPLEMENT THIS SUBTITLE AT THE FACILITY; AND

16 (3) SUBMIT THE FEE REQUIRED UNDER THIS SUBTITLE.

17 (D) (1) THE ANALYSES PREPARED AND NOTIFICATIONS REQUIRED UNDER
18 SUBSECTION (C) OF THIS SECTION, OR DOCUMENTS PREPARED UNDER § 7-703 OF
19 THIS SUBTITLE TO COMPLY WITH SUBSECTION (C) OF THIS SECTION, AND THEIR
20 SUPPORTING DOCUMENTS ARE CONFIDENTIAL AND ARE NOT PUBLIC DOCUMENTS
21 THAT MAY BE DISCLOSED WITHOUT PRIOR WRITTEN PERMISSION OF THE PERSON
22 SUBJECT TO THIS SUBTITLE IN ACCORDANCE WITH TITLE 10, SUBTITLE 6 OF THE
23 STATE GOVERNMENT ARTICLE.

24 (2) (I) NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION, THE
25 DEPARTMENT OF STATE POLICE SHALL DISCLOSE INFORMATION RELATED TO ANY
26 ENFORCEMENT ACTION TAKEN AGAINST A FACILITY UNDER THIS SUBTITLE IF THE
27 DEPARTMENT OF STATE POLICE DETERMINES THAT DISCLOSURE WOULD NOT
28 RESULT IN ANY ADDITIONAL RISK TO THE PUBLIC.

29 (II) IF THE DEPARTMENT OF STATE POLICE MAKES THE
30 DETERMINATION TO DISCLOSE INFORMATION UNDER THIS PARAGRAPH, THE
31 DEPARTMENT OF STATE POLICE SHALL DETERMINE WHICH DOCUMENTS RELATED
32 TO THE ENFORCEMENT ACTION AND INVESTIGATION MAY BE DISCLOSED AS PUBLIC
33 DOCUMENTS SUBJECT TO TITLE 10, SUBTITLE 6 OF THE STATE GOVERNMENT
34 ARTICLE.

35 7-703.

36 ON OR BEFORE JANUARY 1, 2005, THE DEPARTMENT SHALL ADOPT HAZARDOUS
37 MATERIAL SECURITY STANDARDS THAT REQUIRE:

1 (1) PRIORITIZATION AND PERIODIC ANALYSIS, USING ACCEPTED
2 METHODOLOGIES, OF POTENTIAL SECURITY THREATS, VULNERABILITIES, AND
3 CONSEQUENCES;

4 (2) DEVELOPMENT AND IMPLEMENTATION OF SECURITY MEASURES
5 COMMENSURATE WITH RISKS;

6 (3) DOCUMENTATION OF SECURITY MANAGEMENT PROGRAMS,
7 PROCESSES, AND PROCEDURES;

8 (4) TRAINING, DRILLS, AND GUIDANCE FOR EMPLOYEES, CONTRACTORS,
9 SERVICE PROVIDERS, AND OTHERS, AS APPROPRIATE, TO ENHANCE AWARENESS AND
10 CAPABILITY;

11 (5) COMMUNICATIONS, DIALOGUE, AND EXCHANGE OF INFORMATION
12 WITH EMPLOYEES, COMMUNITIES, AND GOVERNMENT AGENCIES AND OFFICIALS;

13 (6) INTERNAL AUDITS TO ASSESS SECURITY PROGRAMS AND
14 PROCESSES AND THE IMPLEMENTATION OF CORRECTIVE MEASURES; AND

15 (7) THIRD-PARTY VERIFICATION THAT OWNERS AND OPERATORS HAVE
16 IMPLEMENTED THE PHYSICAL SECURITY MEASURES THAT HAVE BEEN IDENTIFIED
17 UNDER THE REQUIRED PERIODIC ANALYSIS OF POTENTIAL SECURITY THREATS,
18 VULNERABILITIES, AND CONSEQUENCES.

19 7-704.

20 (A) THE DEPARTMENT, IN CONSULTATION WITH THE DEPARTMENT OF STATE
21 POLICE, SHALL AUDIT A FACILITY, THROUGH AN INSPECTION OR OTHER
22 INVESTIGATION, TO VERIFY THE ANALYSIS SUBMITTED IN ACCORDANCE WITH §
23 7-702(C)(2) OF THIS SUBTITLE.

24 (B) IF THE DEPARTMENT, THROUGH AN AUDIT, FINDS THAT THE FACILITY IS
25 NOT IN COMPLIANCE WITH THE HAZARDOUS MATERIAL SECURITY STANDARDS OF
26 THIS SUBTITLE, THE DEPARTMENT SHALL REFER THE VIOLATION TO THE
27 DEPARTMENT OF STATE POLICE FOR ENFORCEMENT.

28 7-705.

29 (A) (1) ON OR BEFORE JANUARY 1, 2005, THE DEPARTMENT SHALL ADOPT
30 REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SUBTITLE.

31 (2) THE DEPARTMENT MAY NOT ADOPT A REGULATION OR A PART OF A
32 REGULATION TO ENFORCE COMPLIANCE BY A FACILITY WITH THE HAZARDOUS
33 MATERIAL SECURITY STANDARDS ADOPTED UNDER THIS SUBTITLE.

34 (3) (I) THE DEPARTMENT SHALL ADOPT REGULATIONS THAT
35 REQUIRE COLLECTION OF A FEE FOR EACH FACILITY REQUIRED TO REPORT TO THE
36 DEPARTMENT UNDER THIS SUBTITLE.

1 (II) THE FEE SHALL BE BASED ON:

2 1. THE AMOUNT OF HAZARDOUS MATERIALS STORED AT
3 THE FACILITY; AND

4 2. THE COST TO THE DEPARTMENT TO CARRY OUT THE
5 PURPOSES UNDER § 7-706 OF THIS SUBTITLE.

6 (III) IN ANY FISCAL YEAR, FEES COLLECTED UNDER THIS SECTION
7 MAY NOT EXCEED THE ACTUAL COSTS TO THE DEPARTMENT TO CARRY OUT THE
8 PURPOSES OF § 7-706 OF THIS SUBTITLE.

9 7-706.

10 FUNDS IN THE COMMUNITY RIGHT-TO-KNOW FUND UNDER § 7-604(M) OF THIS
11 TITLE SHALL BE USED BY THE DEPARTMENT FOR THE FOLLOWING PURPOSES:

12 (1) PROCESSING THE INFORMATION SUBMITTED TO THE DEPARTMENT
13 UNDER THIS SUBTITLE; AND

14 (2) REGULATION OF THIS SUBTITLE, INCLUDING AUDITING A FACILITY
15 FOR COMPLIANCE WITH THE PROVISIONS OF THIS SUBTITLE.

16 7-707.

17 A PERSON MAY NOT KNOWINGLY SUBMIT FALSE INFORMATION UNDER THIS
18 SUBTITLE.

19 7-708.

20 (A) A PERSON WHO VIOLATES THIS SUBTITLE OR ANY REGULATION ADOPTED
21 UNDER THIS SUBTITLE IS SUBJECT TO A FINE NOT EXCEEDING \$1,000 PER
22 VIOLATION.

23 (B) EACH DAY THAT A VIOLATION CONTINUES IS A SEPARATE VIOLATION.

24 7-709.

25 THIS SUBTITLE DOES NOT RELIEVE ANY FACILITY FROM ANY REQUIREMENT
26 UNDER ANY FEDERAL, STATE, OR LOCAL LAW OR ORDINANCE TO REPORT TO UNITS
27 OF FEDERAL, STATE, OR LOCAL GOVERNMENT.

28 7-710.

29 THE DEPARTMENT OF STATE POLICE MAY ADOPT REGULATIONS TO ENFORCE
30 COMPLIANCE BY A FACILITY WITH THE HAZARDOUS MATERIAL SECURITY
31 STANDARDS ADOPTED UNDER THIS SUBTITLE.

32 SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this
33 Act or the application thereof to any person or circumstance is held invalid for any
34 reason in a court of competent jurisdiction, the invalidity does not affect other

1 provisions or any other application of this Act which can be given effect without the
2 invalid provision or application, and for this purpose the provisions of this Act are
3 declared severable.

4 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2004.